



RECONSTRUCTION OF EXISTING BOATSHED

15-Mar-2019

75 SARSFIELD STREET
HERNE BAY

REQUEST FOR CERTIFICATE OF COMPLIANCE AND
CERTIFICATE OF EXISTING USE RIGHTS

PREPARED FOR:
Rod Duke

B&A
Urban & Environmental

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1.0 THE APPLICANT AND PROPERTY DETAILS

To:	Auckland Council
Site Address:	75 Sarsfield Street, and Sentinel Beach Herne Bay
Applicant's Name:	Rodney Duke
Address for Service:	Barker & Associates Ltd PO Box 1986 Shortland Street Auckland 1140 Attention: Shannon Joyce / Karl Cook
Legal Description:	Lot 1 Deposited Plan 21410 and Part Lot 2 Deposited Plan 21410 (refer to Certificate of Title as Appendix 1).
Site Area:	1,563m ²
Site Owner:	Rodney Duke and Alaister Wall
AUP Zoning:	Residential – Mixed Housing Urban (MHU); Coastal – Coastal Transition Zone; Coastal – General Coastal Marine Zone (GCMZ).
AUP Overlays and Controls:	Significant Ecological Area Terrestrial Overlay; Coastal Inundation 1 per cent AEP Plus 1m control – 1m sea level rise, Coastal Inundation 1 per cent AEP Plus 1m control – 2m sea level rise (no rules apply); Coastal Erosion Hazard Area.
Additional Limitations:	Filled/weak ground.
Locality Diagram:	Refer to Figure 1
Brief Description of Proposal:	Reconstruction of existing boat shed and slipway.

2.0 INTRODUCTION

This Certificate of Compliance (CoC) and Certificate of Existing Use request for reconstruction of a boat shed has been prepared on behalf of Rod Duke who is currently redeveloping the site located at 75 Sarsfield Street, in Herne Bay.

In support of this request we provide a site description, a summary of the proposal, an outline of the applicable statutory framework, an analysis of the Auckland Unitary Plan and concluding statements. Attached are a Landscape and Visual Assessment prepared by John Goodwin of Boffa Miskell and drawing set prepared by Julian Guthrie.

By way of overall summary, the proposed activity, being the reconstruction of the boatshed, is a permitted activity and where the reconstructed boatshed does not comply with any relevant development controls under the AUP (OP) existing use rights apply or infringements to these non-compliances has already been approved by way of an earlier resource consent.

3.0 BACKGROUND

By way of background, the applicants obtained resource consent LUC60112250 for the reconstruction of the original boatshed serving the property at 75 Sarsfield Street in Herne Bay, including the incorporation of a helicopter landing pad and three flights per week, in August 2017. Following judicial review of the consent, the High Court cancelled this consent in December 2018 however works to upgrade the existing boatshed had commenced prior to this decision. The reconstruction works were consented under Legacy as well as the partly operative AUP provisions, and to a design which included some more than minor changes to the form and appearance of the boat shed and the slipway. At the time construction halted following the order of the High Court cancelling the 2017 resource consent the foundations, piles, structural elements and some of the exterior wall and roof framing and cladding had been completed. Completing construction in accordance with the revised design submitted with this application will involve some changes to work already done.

The maintenance, repair and reconstruction of existing lawful coastal marine area structures or buildings is a permitted activity within the General Coastal Marine zone, as such the upgrade works to the boatshed has now been re-designed to meet the permitted activity provisions of the AUP (OP).

As such a Certificate of Compliance is requested under Section 139 of the Resource Management Act (RMA) for the completion of the reconstruction works already

underway¹, noting there is a current coastal permit (permit 27797) for occupation of the coastal marine area which is valid until 10 July 2038.

The reconstructed boatshed infringes a number of the AUP (OP) standards, as outlined in Section 6 below. However, as the original boatshed also infringed these standards and was lawfully established prior to these rules becoming operative, and the effects of the use are similar in character, intensity and scale to those which existed before the Proposed Auckland Unitary Plan was notified, existing use rights apply. An Existing Use Certificate is therefore also requested under Section 139A of the RMA. An assessment in this regard is provided in section 8 below.

To be clear, this request is in respect of the reconstruction of the boatshed. The potential use of the seaward portion of the boat shed structure for helicopter landings is the subject of the 2016 application for resource consent, to be publicly notified to comply with the orders of the High Court made in December 2018.

4.0 SITE DESCRIPTION

The subject site is an area of the Common Marine and Coastal Area (CMCA) at Sentinel Beach in the Waitemata Harbour and part of a property that is 1,563m² in area and held under Certificate of Title NA1113/241 (refer to **Appendix 1** for further detail). The property is almost rectangular in shape and slopes from the southern boundary (being Sarsfield Road) toward the northern boundary (which adjoins the Waitemata Harbour), with a difference in height across the site of approximately 17.5m. Refer to locality plan at **Figure 1** below for further detail.

The property was previously occupied by three dwelling units, however is currently being redeveloped, replacing the three dwellings with one standalone dwelling as approved under resource consents R/LUC/2016/101 and R/LUC/2016/1406.

¹ Note all construction works related to the boatshed reconstruction have ceased at this time.



Figure 1: Locality Plan (Source: Auckland Council Geomaps Viewer)

A number of mature trees are located toward the north-western corner of the property which is identified as a 'Significant Ecological Area' under the AUP (OP).

A boatshed, associated with the property, is located seaward of the dwelling. It is this boatshed which is the subject of the s 139 request. Whilst the exact date that the boatshed was originally constructed is not known, a review of Council's historical aerial photography confirms it was constructed prior to 1959, refer to aerial image in **Figure 2** below:



Figure 2: Aerial Photography 1959 (Source: Auckland Council Geomaps Viewer)

Figure 3 below shows the boatshed prior to the commencement of reconstruction works in accordance with the 2017 resource consent.



Figure 3: Photographs of boatshed prior to commencement of works

5.0 PROPOSAL

This proposal is to complete reconstruction of the original boatshed and slipway to a design and using materials which comply with the requirements for reconstruction of structures in the CMA as a permitted activity.

The reconstruction works will be undertaken in accordance with the attached drawings prepared by Julian Guthrie Architects (refer **Appendix 2**).

The boatshed reconstruction will be completed using natural weathered timber horizontal cladding, with vertical boarded timber shutters and corrugated metal roofing. The form of the original slipway structure will be altered to accommodate modern vessels but in appearance and materials used will be essentially the same.

The boatshed will be reconstructed to closely match the dimensions (height, length, width and footprint) of the original shed.

A more detailed summary of the proposed works is provided in section 8.2 below.

6.0 DISTRICT PLAN RULES ASSESSMENT

6.1 OPERATIVE DISTRICT PLAN RULES ASSESSMENT

The site is subject to the provisions of the Auckland Unitary Plan – Operative in Part (hereafter referred to as the “AUP (OP)”. In terms of zoning, the works proposed fall within the Mixed Housing Urban, Coastal Transition and General Coastal Marine zones, this is best illustrated by the AUP (OP) maps, refer **Figure 4** below.

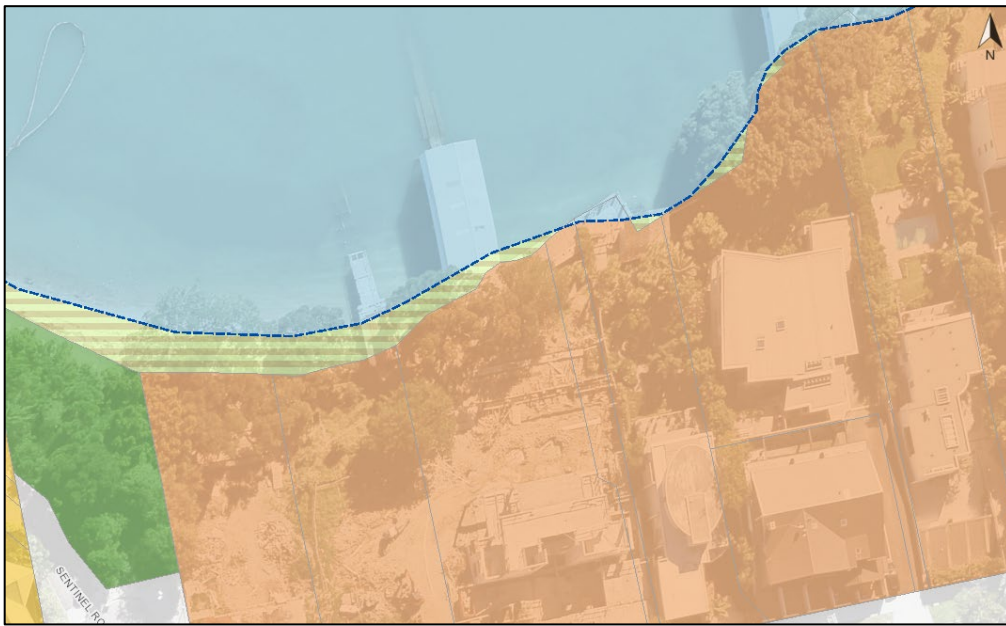


Figure 4: AUP (OP) zone maps (Source: Auckland Council Geomaps)

The following table provide an assessment of the proposal against the AUP (OP) provisions.

6.1.1 Activities within Coastal Marine Area

Rule	Compliance
F2 Coastal – General Coastal Marine Zone - Activities	
F2.19.4 Activities – Coastal Marine Area Disturbance	CMA disturbance that is associated with operation, maintenance, repair or reconstruction of an existing lawful CMA structure or building – Permitted Activity (A32).
F2.19.10 Activities – Structures	Maintenance, repair or reconstruction of an existing lawfully coastal marine area structures or buildings – Permitted (A122).

Rule	Compliance
	Note: The applicant holds a current coastal occupation permit which is valid until 2038 and will be relied upon for the reconstructed boatshed, therefore Rule A127 does not apply.
F2 Coastal – General Coastal Marine Zone - Standards	
F2.21.10.1. Maintenance, repair and reconstruction of existing lawful coastal marine area structures or buildings	Complies – an assessment in this regard is provided in section 7 below.

6.1.2 Activities above Mean High Water Springs

E11 Land Disturbance – Regional	
E11.4.3 Activity table – overlays	N/A - no earthworks are required, the original piles were removed and replaced with new steel piles.
E15 Vegetation Management	
E15.4.2 Vegetation and biodiversity management in overlays	N/A – no vegetation is proposed to be removed from the area identified as SEA.
E36 Natural Hazards and Flooding	
E36.4.1 Activities – Coastal Erosion Hazard Area	External alterations to buildings in the coastal erosion hazard area which do not increase the gross floor area of the building – Permitted (A1).
E36.4.1 Activities on land in the coastal storm inundation 1 per cent annual exceedance probability (AEP) plus 1 m sea level rise area	The boatshed will be located within the Coastal Storm inundation 1% AEP plus 1m sea level rise area however the proposal involves the reconstruction of the existing boatshed (non-habitable building) only and therefore there are no rules applicable under E36.4.1.
E36.4.1 Activities on land which may be subject to land instability	N/A – the site is not considered to be ‘land which may be subject to instability’ as defined by the AUP (OP).
F8 Coastal – Coastal Transition Zone (applies to land above MHWS)	
H7.9.1 Activity Table – Open Space Zones ²	There is no provision for privately owned boatsheds within the Informal Recreation zone, and as such an application for reconstruction works to that part of the original boatshed sitting within the land zoned Coastal Transition zone would default to non-complying activity

² As per the provisions of Chapter F8, the land zoned Coastal Transition zone is to be treated as Open Space – Informal Recreation zone (refer Clause F8.2(2)).

	<p>status under Rule (A1) as an activity not otherwise provided for.</p> <p>However, the original boatshed was constructed prior to the introduction of the AUP (OP) (circa 1940s/1950s) and therefore Existing Use Rights apply and an assessment in this regard is provided in section 8 below.</p>
<p>H7.11.1 Building Height</p> <ul style="list-style-type: none"> - Maximum 8m 	<p>The reconstructed boatshed will be the same height as the original boatshed which is less than 8m in height (as measured from mean sea level in the CMA and ground level outside of the CMA).</p>
<p>H7.11.2 Height in Relation to Boundary</p> <ul style="list-style-type: none"> - 3m + 45° 	<p>Does not comply – the reconstructed boatshed will straddle the boundary of Sentinal Beach with 75 Sarsfield Street – Existing use rights apply and an assessment in this regard is provided in section 8 below.</p>
<p>H7.11.3. Yards</p> <ul style="list-style-type: none"> - Rear Yard: 6m - Coastal Protection Yard: 20m 	<p>The reconstructed boatshed protrudes into the 6m yard setback as it applies to the seaward boundary with 75 Sarsfield Street by up to 6m over a length of 6.5m;</p> <p>The reconstructed boatshed straddles mean high water springs, and therefore breaches the 20m coastal protection setback by up to 20m over a length of 6.5m</p> <ul style="list-style-type: none"> - Existing use rights apply and an assessment in this regard is provided in section 8 below.
<p>H7.11.5 Gross Floor Area</p> <ul style="list-style-type: none"> - Maximum 100m² 	<p>The reconstructed boatshed will have a floor area of 140m² and therefore does not comply.</p> <ul style="list-style-type: none"> - Existing Use Rights Apply and an assessment in this regard is provided in section 8 below.
<p>H7.11.6 Maximum Site Coverage</p> <ul style="list-style-type: none"> - 10% 	<p>N/A – a portion of the boatshed is located on Sentinel Beach which is zoned Coastal Transition zone/Informal Recreation zone. However, this portion of land is not considered to be a 'site' in terms of the AUP (OP) definitions therefore this standard does not apply.</p>
<p>H7.11.7 Maximum Impervious Areas</p>	<p>N/A – a portion of the boatshed is located on Sentinel Beach which is zoned Coastal</p>

- Lesser of 10% or 5,000m ²	Transition zone/Informal Recreation zone. However, this portion of land is not considered to be a 'site' in terms of the AUP (OP) definitions therefore this standard does not apply.
H7.11.8 Lighting	All lighting will be designed to comply.
H5 Residential – Mixed Housing Urban - Activities	
H5.4.1 Activities	Alterations to existing buildings and accessory buildings are permitted in the MHU zone subject to compliance with the relevant standards. The boatshed does not comply with Standards H5.6.5, H5.6.8, H5.6.9, H5.6.10, H5.6.11 and would therefore require consideration as a restricted discretionary activity, however existing use rights apply and an assessment in this regard is provided in section 8 below.
H5.6.4 Building Height - Maximum 11m	Complies – the boatshed is less than 11m in height.
H5.6.5 Height in Relation to Boundary	Does not comply – the reconstructed boatshed will straddle the northern boundary of the property – Existing use rights apply and an assessment in this regard is provided in section 8 below.
H5.6.8 Yards - Rear: 1m - Coastal Protection Yard: 10m	The reconstructed boatshed straddles MHWS and therefore breaches the 10m coastal protection setback by up to 10 over a length of 6.5m – Existing use rights apply and an assessment in this regard is provided in section 8 below.
H5.6.9 Maximum Impervious Areas - Max 60%	Does not comply - existing coverage/proposed coverage is 68.5%, however these coverages were approved by resource consent (LUC/2016/1406) obtained in June 2016.
H5.6.10 Building Coverage - Maximum 45%	Complies - existing coverage/proposed coverage is 44.9%.
H5.6.11 Landscaped Area - Minimum 35% - 50% of front yard is to be landscaped	Does not comply - existing coverage/proposed coverage is 31.4%, however these coverages were approved by resource consent (LUC/2016/1406) obtained in June 2016. No changes are proposed to the existing front yard arrangements.
H5.6.12 Outlook Space	Applies to dwelling only, no change to existing outlook arrangements.

H5.6.13 Daylight	Complies.
H5.6.14 Outdoor living space	Applies to dwelling only, no change to existing outdoor living arrangements.
H5.6.15. Front, side and rear fences and walls	No change to existing fencing arrangements.

7.0 PERMITTED ACTIVITY ASSESSMENT

As outlined above, the reconstruction of the boatshed in the Coastal Marine Area is a permitted activity under Rule F2.19.10 Activity 122, subject to compliance with the relevant standards.

Standard F2.21.10.1 *'Maintenance, repair and reconstruction of existing lawful coastal marine area structure or buildings'* applies and requires consideration.

Standard F2.21.10.1 requires that:

- 1) The work must maintain the structure or building in a good and safe working condition.
- 2) The work must not use materials which alter the form or external appearance of the structure in more than a minor way.
- 3) The work must not change the area occupied by the structure.

Plan Change 15 proposed the following changes to Clause 2 as follows:

- 2) The work must not alter the form or external appearance of the structure in more than a minor way.

The reconstruction works satisfy these criteria as follows:

- 1) The reconstructed boatshed will be completed to a good and safe working condition using new materials throughout, and can be maintained in a good and safe working condition.
- 2) The LVA assessment by Boffa Miskell (refer **Appendix 4**) concludes that the reconstruction works do not alter the form or appearance of the structure in more than a minor way.
- 3) The reconstructed boatshed will occupy the same footprint and be of the same scale (height, width, length) as the original boatshed, refer to Sheets CoC.03, CoC.05 and CoC.06 of the architectural drawings attached at **Appendix 2**.

8.0 EXISTING USE EVALUATION

8.1 STATUTORY FRAMEWORK

A person may request the consent authority to issue an existing use certificate under section 139A(1) that:

- (a) Describes the use of land in a particular location; and
- (b) States that the use if the land was a use of land allowed by section 10 on the date on which the authority issues the certificate; and
- (c) Specifies the character, intensity, and scale of the use on the date on the authority issues the certificate.

Section 139A(4) states that the consent authority must issue a certificate if it is under subsection (1) if is satisfied that the use of the land is a use of land allowed by section 10 on the date on which the authority issues the certificate.

Section 10(1)(a) of the Act states that:

- i. Land may be used in a manner that contravenes a rule in a district plan or proposed plan if the use was lawfully established before the rule became operative or the proposed plan was notified; and
- ii. The effects of the use are the same or similar in character, intensity, and scale to those which existing before the rule became operative or the proposed plan was notified.

Section 10(2) of the Act states that:

- This section does not apply when use of land that contravenes a rule in a district plan or proposed district plan has been discontinued for a continuous period of more than 12 months after the rule in the plan became operative or the proposed plan was notified.

Section 10(3) of the Act states that:

- This section does not apply if reconstruction or alteration of, or extension to, any building to which this section applies increases the degree to which the building fails to comply with any rule in a district plan or proposed plan.

An assessment in this regard is provided in section 7 below.

8.2 EVALUATION

The proposal involves the reconstruction of the boatshed at 75 Sarsfield Street in

Herne Bay. As outlined above, the exact date that the boatshed was constructed is not known, however a review of Council's records confirm that it was constructed sometime prior to 1959, prior to the now operation Auckland Unitary Plan and the legacy Isthmus District Plan came into effect.

As outlined above, reconstruction works were underway when an order of the High Court cancelled the resource consent on 14 December 2018. It has been confirmed that these works commenced less than 12 months from the date that the original shed was deconstructed. Of note, the Building Consent (reference BCO10097542) for the reconstruction was issued on 12 January 2018 and reconstruction works were well advanced in December 2018, with the structure itself, including new piles and structural framing and some of the roof and walls completed. **Figure 5** below shows the part reconstructed boatshed as at 16 January 2019:



Figure 5: Part reconstructed boatshed (Image taken 16 January 2019)

The original boatshed comprised a simple gable roofed building, and was clad in a mix of corrugated iron and timber weatherboard cladding, with corrugated iron roofing. The eastern and western elevations each contained four shuttered openings. The roof was finished in a light green and included a number of translucent panels.

A small lean-to was located to the rear (south) of the building, with boat access to the north side of the building, which opened onto a 29m long slipway which was visible under the floor of the boatshed and extended part way into the floor of the building.

It is proposed to complete the reconstruction of the boatshed as depicted in the

attached drawings prepared by Julian Guthrie Architects (refer **Appendix 2**). In summary the following is proposed:

- The reconstructed boatshed is the same location and will be of the same form and scale as the original boatshed, refer to Sheets CoC.03, CoC.05 and CoC.06 of the architectural drawings attached at **Appendix 2**.
- The lean-to to the rear of the building will not be reconstructed, reducing the boatshed's overall length from 24.82m to 22m, refer to Sheets CoC.02 and CoC.03 of the architectural drawings attached at **Appendix 2**.
- The reconstructed slipway extends from a landing pad located to the northern side of the building, refer to Sheet CoC.03, CoC.05 and CoC.06 of the architectural drawings attached at **Appendix 2**.
- On the eastern elevation there will be three shuttered windows, and on the western elevation two shuttered windows. A double door providing access into the boat shed will be located on the eastern elevation towards the rear of the building.
- The building is to be clad with timber weatherboards finished in 'Slater Grey', the roof will be reconstructed using a colour steel roofing finished in 'Thunder Grey'.
- The reconstructed building is supported by steel piles (the original boatshed was supported by timber piles).
- While the original building had a slipway that was partly located underneath the boatshed, the proposed building is designed to accommodate more modern vessels and the slipway connects at floor level to the boatshed at the northern face of the building.

- **Character**

The surrounding area portrays a modified coastal character, with a number of boatsheds/ramps within the immediate vicinity and throughout the length of the Waitemata harbour coastline. Notably, the two boatsheds located at 73 and 79 Sarsfield Street (located either side of the subject site), both feature the same simple gable roofed form as the reconstructed shed will.



Figure 4: Render of proposed reconstructed boatshed

The boatshed retains its original form and footprint. The existing vegetation within the site (being identified as SEA) will be retained, ensuring that the continuous treed coastal edge and treed backdrop to the boatshed is retained.

The reconstructed shed will be clad with timber weatherboards which will naturally weather over time, which is considered sympathetic to the coastal landscape. Care has been taken to ensure appropriate relief is provided on the eastern and western elevations, with the shuttered windows and the small eaves to the roof, in keeping with the original boatshed design.

The reconstruction of the boatshed as proposed has been assessed by John Goodwin of Boffa Miskell who concludes that the works will not alter the boatshed in more than a minor way.

- **Scale**

As discussed above, the reconstructed building is located in the exact same location as the original building. The building will be the same height and width as the original, however at 22m will be slightly shorter than the original building (refer to Sheets CoC.02 and CoC.03 of the architectural drawings attached at **Appendix 2**).

As the reconstructed building will occupy the same footprint as the original boatshed, the extent of non-compliance with the AUP (OP) standards (yards, GFA, coverages, height in relation to boundary) will not be increased.

The nature and effects of these infringements remain similar to those of the original boatshed. It is further noted that the infringements, particularly relating to the yard and height in relation to boundary standards, effects only the applicant's property.

The revised slipway design effectively removes the section of the original slipway under the boat sheds floor and as a result makes the underneath of the building appear more open. as well as enabling the public to pass more freely under the building should they so wish, refer to Sheet CoC.03, CoC.05 and CoC.06 of the architectural drawings attached at **Appendix 2**.

- ***Intensity***

The reconstructed boatshed will continue to be used for recreational boating and yacht storage. Bathroom facilities and a bench with a sink are proposed. The use of these will be incidental to the boating activities. Use of the boatshed will therefore be the same as that of the original boatshed.

9.0 CONCLUSION

On the basis of the foregoing assessment, it is considered the reconstruction of the boatshed in accordance with the plans submitted with this application is a permitted activity in respect of that part of the building in the General Coastal Marine Zone, and the reconstruction of that part above MHWS and that does not comply with the development controls or other standards of the Mixed Housing Urban, Coastal Transition and General Coastal Marine zones can be completed in reliance on existing use rights and the existing Resource Consent LUC/2016/1406.

It is considered, therefore, that Council is able to issue a Certificate of Compliance and a Certificate of Existing Use in respect of the activity, pursuant to s139 and S139A of the Resource Management Act.

AUTHORS



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Date: 15 March 2019